IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3728 of 2001
to
FIRST APPEAL No 3769 of 2001
with
FIRST APEPAL No 3704 of 2001
to
FIRST APPEAL No 3727 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

STATE OF GUJARAT

Versus

CHHOTABHAI KASHIBHAI DECD. BY HEIRS BHARATKUMAR CHHOTALAL

Appearance:
GOVERNMENT PLEADER for Appellants
MR AJ PATEL for Respondents

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of Order: 27/08/2001

COMMON ORAL JUDGMENT

#. Admit. Notice waived by Mr. A.J. Patel learned counsel appearing for the respondents. Learned advocates requested the Court to take up the matters for final hearing and hence, these appeals are heard and disposed of by this common judgment.

#. Lands in both these groups of appeals are situated at village Adalaj taluka and District - Gandhinagar. So far as the location is concerned, the trial court from the evidence pointed out that village Adalaj is situated between two highways namely Sabarmati-Mehsana and Sarkhej-Gandhinagar Highway. It is also clear from the evidence that the distance between Gandhinagar and Adalaj is hardly 4 kilometers. The distance between Sabarmati, a suburb of Ahmedabad, and, Gandhinagar is hardly 10 kilometers. Kalol, another industrial town is at a distance of 11 kilometers. It is also clear from the evidence that the village has all facilities like sewage, tar road, light, water, S.T. Bus facilities, a Police Station, a Post Office, a bank, a petrol pump, a school, a college etc. It is also clear from the evidence that village Adalaj is hardly 7 kilometers away from the Gujarat High Court. We can take cognizance of the fact that this village has also got importance on account of ancient monument which is known as "Adalaj Ni Vav". The trial court has considered exhs. 19, 20 & 21 i.e. the judgments delivered by the court. It is also clear that the lands referred in the awards exhs. 19, 20 and 21 are of similar nature i.e. fertility, potentiality etc. and are situated nearby. The trial court has pointed out that the other side has not produced any evidence contrary to this and therefore, there is sufficient evidence about the nature, fertility and potentiality of the lands considered by the court earlier while making awards. The trial court has considered the award exh. 19 in Land Acquisition Case No. 343/89 wherein, notification under Sec. 4 was published on 3.6.87 and the Court awarded Rs. 50/- per sq.mt. It appears that the appellants approached the High Court and the amount was increased by Rs. 25/-. So far as the present case is concerned, the notification under Sec. 4 was published on 13.12.85. There is another award at Exh. 20, wherein notification under Sec. 4 was published on 2.1.86 and the Court awarded Rs. 75/- per sq. mts. There is another award exh. 128 in L.A. Case No. 22/93. From the text of the judgment relied upon by the trial court, it appears that the notification under Sec. 4 was published on 21.12.87. The trial court vide exh. 128 considered the price at the rate of Rs. 85/- per sq. mt. for agricultural lands and Rs. 195/- for non-agricultural lands. After considering the difference

of two years, by decreasing 10% for each year, the trial court was of the view that Rs.69/- should be awarded. Exh. 128 referred to hereinabove was challenged before this Court in First Appeal No. 497/99 with First Appeal Nos. 7289 to 7297/99. The Division Bench considering the various aspects, confirmed the order and the appeals preferred were dismissed. Exh. 157, a judgment for lands acquired was considered. In that case, the lands at Adalaj i.e. same village were acquired and considering the same compensation is fixed.

#. In another group of appeals, notification under Sec. 4 was published on different date namely on 29.1.88. The notification under Sec. 6 was published on 6.3.88. The claimants claimed at the rate of Rs. 100/-. However, the District Court awarded Rs. 85/- per sq. mt. with statutory benefits. In view of exactly the same facts, fertility of lands etc. being the same, there is no reason why not to award compensation on the basis of the decision delivered by the Division Bench of this Court in F.A. No. 499/99 with F.A. Nos. 7289 to 7297/99. Of course, the amount of 10% per year will have to be increased or decreased as the case may be. Learned Govt. Pleader fairly stated that if the government is accepting the decision of the Division Bench in the aforesaid First Appeals, there should be no difficulty. But if the government is not accepting the decision of the Division Bench in the aforesaid First Appeals, the State may take matters to the higher forum.

#. So far as the present appeals are concerned, in view of the binding decision of the Division Bench of this Court, this Court cannot and would not like to take a different view. Hence, in view of the decision delivered by the Division Bench, no other view is possible in these group of appeals. The First Appeal Nos. 3704 to 3727/01 and 3728 to 3769/01 are dismissed. The government is directed to deposit the amount within a period of three months.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]
pirzada/-